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6 **UNITED STATES DISTRICT COURT**  
7 **EASTERN DISTRICT OF CALIFORNIA**  
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11 JUNIOR A. MORAN, ) Case No.: 1:23-cv-01313-SKO (HC)  
12 )  
13 ) Petitioner, ) ORDER DISMISSING PETITION WITH LEAVE  
14 ) TO FILE A FIRST AMENDED PETITION  
15 )  
16 ) v. ) [THIRTY DAY DEADLINE]  
17 )  
18 )  
19 ) OFFICE OF THE ATTORNEY GENERAL )  
20 ) OF THE STATE OF CALIFORNIA, )  
21 ) Respondent. )  
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19 Petitioner is a state prisoner proceeding *pro se* and *in forma pauperis* with a petition for writ of  
20 habeas corpus pursuant to 28 U.S.C. § 2254. Petitioner filed the instant federal habeas petition on  
21 September 5, 2023. A preliminary screening of the petition reveals that the petition fails to present  
22 any grounds for relief and fails to name a proper respondent. Therefore, the Court will DISMISS the  
23 petition with leave to file an amended petition.

24 **I. DISCUSSION**

25 **A. Preliminary Review of Petition**

26 Rule 4 of the Rules Governing Section 2254 Cases requires the Court to make a preliminary  
27 review of each petition for writ of habeas corpus. The Court must summarily dismiss a petition “[i]f it  
28 plainly appears from the petition and any attached exhibits that the petitioner is not entitled to relief in

the district court . . .” Rule 4; O’Bremski v. Maass, 915 F.2d 418, 420 (9th Cir. 1990). The Advisory Committee Notes to Rule 8 indicate that the Court may dismiss a petition for writ of habeas corpus, either on its own motion under Rule 4, pursuant to the respondent’s motion to dismiss, or after an answer to the petition has been filed.

B. Failure to State a Cognizable Federal Claim

The basic scope of habeas corpus is prescribed by statute. Title 28 U.S.C. § 2254(a) states:

The Supreme Court, a Justice thereof, a circuit judge, or a district court shall entertain an application for a writ of habeas corpus in behalf of a person in custody pursuant to a judgment of a State court *only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States.*

(emphasis added). See also Rule 1 to the Rules Governing Section 2254 Cases in the United States District Court. The Supreme Court has held that “the essence of habeas corpus is an attack by a person in custody upon the legality of that custody . . .” Preiser v. Rodriguez, 411 U.S. 475, 484 (1973).

To succeed in a petition pursuant to 28 U.S.C. § 2254, Petitioner must demonstrate that the adjudication of his claim in state court

(1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or (2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.

28 U.S.C. § 2254(d)(1),(2).

In addition to the above, Rule 2(c) of the Rules Governing Section 2254 Cases requires that the petition:

- (1) Specify all the grounds for relief available to the petitioner;
- (2) State the facts supporting each ground;
- (3) State the relief requested;
- (4) Be printed, typewritten, or legibly handwritten; and
- (5) Be signed under penalty of perjury by the petitioner or by a person authorized to sign it for the petitioner under 28 U.S.C. § 2242.

Petitioner has failed to comply with Rule 2(c) by failing to specify any ground(s) for relief, the facts supporting his ground(s), and the relief requested. Therefore, Petitioner fails to state a cognizable federal habeas claim and the petition must be dismissed. Petitioner will be granted an

1 opportunity to file a First Amended Petition curing these deficiencies. Petitioner is advised that he  
2 should entitle his pleading, "First Amended Petition," and he should reference the instant case number.  
3 Failure to comply with this order will result in dismissal of the action.

4 C. Failure to Name a Proper Respondent

5 Petitioner names the Office of the Attorney General as Respondent. A petitioner seeking  
6 habeas corpus relief under 28 U.S.C. § 2254 must name the state officer having custody of him as the  
7 respondent to the petition. Rule 2 (a) of the Rules Governing § 2254 Cases; Ortiz-Sandoval v. Gomez,  
8 81 F.3d 891, 894 (9th Cir. 1996); Stanley v. California Supreme Court, 21 F.3d 359, 360 (9th Cir.  
9 1994). Normally, the person having custody of an incarcerated petitioner is the warden of the prison  
10 in which the petitioner is incarcerated because the warden has "day-to-day control over" the petitioner.  
11 Brittingham v. United States, 982 F.2d 378, 379 (9th Cir. 1992); see also Stanley, 21 F.3d at 360.  
12 However, the chief officer in charge of state penal institutions is also appropriate. Ortiz, 81 F.3d at  
13 894; Stanley, 21 F.3d at 360. Where a petitioner is on probation or parole, the proper respondent is his  
14 probation or parole officer and the official in charge of the parole or probation agency or state  
15 correctional agency. Id.

16 Petitioner's failure to name a proper respondent requires dismissal of his habeas petition for  
17 lack of jurisdiction. Stanley, 21 F.3d at 360; Olson v. California Adult Auth., 423 F.2d 1326, 1326  
18 (9th Cir. 1970); see also Billiteri v. United States Bd. Of Parole, 541 F.2d 938, 948 (2nd Cir. 1976).  
19 However, the Court will give Petitioner the opportunity to cure this defect by amending the petition to  
20 name a proper respondent, such as the warden of his facility. See West v. Louisiana, 478 F.2d 1026,  
21 1029 (5th Cir. 1973), *vacated in part on other grounds*, 510 F.2d 363 (5th Cir. 1975) (en banc)  
22 (allowing petitioner to amend petition to name proper respondent); Ashley v. State of Washington, 394  
23 F.2d 125 (9th Cir. 1968) (same).

24 **II. ORDER**

25 Accordingly, IT IS HEREBY ORDERED:

- 26 1) The Petition for Writ of Habeas Corpus is DISMISSED WITHOUT PREJUDICE for  
27 failure to state a claim and failure to name a proper respondent; and  
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1           2) Petitioner is GRANTED thirty (30) days from the date of service of this order to file a First  
2           Amended Petition.

3  
4 IT IS SO ORDERED.

5 Dated: **September 6, 2023**

*/s/ Sheila K. Oberto*  
UNITED STATES MAGISTRATE JUDGE